Hospitality Industry

Guidelines

UNDER THE PROVISIONS OF
THE HUMAN RIGHTS CODE (MANITOBA)

FOR:

OWNERS, MANAGERS AND EMPLOYEES OF THE HOSPITALITY INDUSTRY

THE MANITOBA HUMAN RIGHTS COMMISSION

LA COMMISSION DES DROITS DE LA PERSONNE DU MANITOBA

Section 58 of **The Code** states:

Unless expressly provided otherwise herein or in another Act of the Legislature, the substantive rights and obligations in this Code are paramount over the substantive rights and obligations in every other Act of the Legislature, whether enacted before or after this Code.

The Manitoba Human Rights Commission wishes to express its appreciation to the Manitoba Restaurant and Foodservices Association for its valued advice during the preparation of this document.

92-03946/

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PREFACE

"Human rights legislation is intended to give rise, amongst other things, to individual rights of vital importance, rights capable of enforcement, in the final analysis, in a court of law. I recognize that in the construction of such legislation the words of the Act must be given their plain meaning, but it is equally important that the rights enunciated be given their full recognition and effect. We should not search for ways and means to minimize those rights and to enfeeble their proper impact. Although it may seem commonplace, it may be wise to remind ourselves of the statutory guidance given by the federal Interpretation Act which asserts that statutes are deemed to be remedial and are thus to be given such fair, large and liberal interpretation as will best ensure that their objects are attained."

—Chief Justice Dickson, in *Action Travail des Femmes v. C.N. Railway (1987), 8 CHRR d/4210, 40 D.L.R. (4th) 193 (Can.).*

These Guidelines reflect the provisions of **The Human Rights Code**, which was proclaimed on December 10, 1987. They explain how **The Code** regulates employment practices and the provision of services to the public in the Manitoba hospitality industry.

Some information in this booklet is a simplified description of provisions of **The Human Rights Code.** There are also examples of discrimination, and of how the law applies. These examples are intended as illustrations only, and do not represent the full range of situations to which **The Code** applies, or which could lead to a substantiated complaint under **The Code.**

If there is any conflict between these Guidelines and ***The Code, The Code*** *prevails. For more information, contact The Manitoba Human Rights Commission.*

Owner/operators in the hospitality industry and their employees can be reasonably sure they are complying with **The Code** if they follow these general principles:

— Treat people as individuals instead of as members of any particular group (ie, avoid stereotyping)
— Make decisions about offering service to a customer based only on her/his personal history ("individual merit")
— Accommodate people who have special needs when it is reasonable to do so ("reasonable accommodation")

Comprehensive human rights legislation in Manitoba, which is similar to other such law in Canada, came into force on August 13, 1970, with the proclamation of Manitoba's first **Human Rights Act.** This legislation created The Manitoba Human Rights Commission and empowered it to receive, investigate and work towards resolving complaints of discrimination. In the Spring of 1971 the Commission began to receive and act upon complaints of discrimination. The legislation also authorized the Commission to create and implement general educational programs to eliminate discrimination. There have been several revisions of the law since then, leading to **The Code,** which came into force on December 10, 1987.

WHO SHOULD READ THESE GUIDELINES?

These Guidelines are important to you if you are the:

— owner of a business in the hospitality industry;
— operator of such a service; or,
— employee of such a service.

While the Guidelines are addressed to owner/operators, customers of such services should also find these Guidelines useful.

The Code may place liability for a discriminatory act not only on the individual who commits the act, but also on the employer, owner or principal of the service where the act was committed. Section 10 of **The Code** states:

Vicarious responsibility.
For the purposes of this Code, where an officer, employee, director or agent of a person contravenes this Code while acting in the course of employment or the scope of actual or apparent authority, the person is also responsible for the contravention unless the person

(a) did not consent to the contravention and took all reasonable steps to prevent it; and
(b) subsequently took all reasonable steps to mitigate or avoid the effect of the contravention.

Vicarious responsibility also includes the owner/operator's responsibility to protect staff; for example, where an owner/employer has knowledge of a *customer's* discriminatory acts, and does not act in a *reasonable manner* to stop a customer from en-

gaging in such acts, then that owner/operator may be contravening **The Code**.

> *Companies which develop written policies on human rights issues can benefit through improved employee and customer relations.*

Commission staff are available to provide consultation in the development of business practices which lead to the elimination of discrimination and the promotion of equity in service and the workplace.

THE CODE ON THE HOSPITALITY INDUSTRY

Sections 13 (1) and (2) of **The Code** directly address the hospitality industry:

> *Discrimination in service, accommodation, etc.*
> *13 (1) No person shall discriminate with respect to any service, accommodation, facility, good, right, licence, benefit program or privilege available or accessible to the public or to a section of the public, unless bona fide and reasonable cause exists for the discrimination.*
>
> *Exception for the age of majority.*
> *13(2) Nothing in subsection (1) prevents the denial or refusal of a service, accommodation, facility, good, right, licence, benefit, program or privilege to a person who has not attained the age of majority if the denial or refusal is required or authorized by a statute in force in Manitoba.*

For example, **The Liquor Control Act** of Manitoba prohibits the sale of liquor to persons under the age of majority. Section 13 (2) recognizes this prohibition and does not consider it to be an unreasonable denial of service. Other information on what is reasonable discrimination, and what contravenes **The Code,** is presented throughout this document.

Here is how **The Code** defines discrimination:

> *9 (1) In this Code, "discrimination" means*
> *(a) differential treatment of an individual on the basis of the individual's actual or presumed membership in or association with some class or group of persons, rather than on the basis of personal merit; or*
> *(b) differential treatment of an individual or group on the basis of any characteristic referred to in subsection (2); or*
> *(c) differential treatment of an individual or group on the basis of the individual's or group's actual or presumed association with another individual or group whose identity or membership is determined by any characteristic referred to in subsection (2); or*
> *(d) failure to make reasonable accommodation for the special needs of any individual or group, if those special needs are based upon any characteristic referred to in subsection (2).*

Applicable Characteristics.

> *9 (2) The applicable characteristics for the purposes of clauses (1) (b) to (d) are*
> *(a) ancestry, including colour and perceived race;*
> *(b) nationality or national origin;*
> *(c) ethnic background or origin;*
> *(d) religion or creed, or religious belief, religious association or religious activity;*
> *(e) age;*
> *(f) sex, including pregnancy, the possibility of pregnancy, or circumstances related to pregnancy;*
> *(g) gender-determined characteristics or circumstances other than those included in clause (f);*
> *(h) sexual orientation;*
> *(i) marital or family status;*
> *(j) source of income;*
> *(k) political belief, political association or political activity;*
> *(l) physical or mental disability or related characteristics or circumstances, including reliance on a dog guide or other animal assistant, a wheel chair, or any other remedial appliance or device.*

The Code, through Section 9 (1), also prohibits unreasonable discrimination based on a person's real or assumed membership in groups **other** than those specifically mentioned in the legislation. Any treatment of people which differs from one person to another because of stereotyping rather than being based on individual merit, is contrary to **The Code, whether or not** that group of persons is listed in Section 9(2). For instance, criminal record is not specifically mentioned in **The Code,** but if you unreasonably deny service or employment to someone solely because the person has a criminal record, you may contravene **The Code.** Consideration should be given to the particulars of the offense involved; the age of the person at the time of conviction; the nature of the offense; whether the offense, if repeated, would pose a significant threat to the owner's ability to carry on its business safely and efficiently. These are some factors to consider when making the decision to offer or deny employment or service.

Differential Treatment

The law requires that any service, or employment available to the public must be **equally** available to all members of the public without unreasonable discrimination. Such discrimination is treating one person differently from any other person because he or she belongs — or is assumed to belong — to a specific group of people. As an example, someone is treated differently because he or she is Jewish (or because they are assumed to be Jewish). The philosophy behind the law is that people should be judged only on their individual strengths and shortcomings, and not on the assumed merits or deficiencies of any group of people — that is, people should not be stereotyped.

Following are some examples of situations which may be discriminatory

— a night club owner is prejudiced against aboriginal people and therefore refuses to allow them into the premises
— a pub owner refuses service to a person because he/she once had an epileptic seizure on the premises and he fears it will happen again
— a pub owner refuses to serve a man, solely because he is the brother of a customer barred for creating a disturbance
— a restaurateur limits the time teenagers can remain on the premises as he believes their behaviour may become rowdy, but imposes no time limits on adults

Time limits, of themselves do not contravene **The Code,** providing they are applied to all customers, regardless of the group to which they may belong. Similarly, unacceptable behaviour does not have to be tolerated, however barring persons from a particular group on the stereotypical assumption that they will be unruly, may be discriminatory. To refuse service to a person or persons who have previously been disruptive would not be a contravention of **The Code.**

To treat someone differently than others based on assumptions about the person's behaviour, or some characteristic associated with the group to which the person belongs, is a common form of discrimination and is a contravention of **The Code.** If readers are unsure of the provision of **The Code** in any particular situation, they are encouraged to contact the Commission for advice.

Reasonable Accommodation

To make reasonable accommodation for the special needs of a prospective or current employee, or a customer, when it is both possible and reasonable to do so is a requirement of **The Code** as stated in Section 9 (1) (d)

The principles of equality discussed in the preamble to **The Code,** recognize the individual worth and dignity of every member of the human family. Implicit in this principle is the right, amongst others, of equality of opportunity with all other individuals. To protect this right it is necessary to ensure that reasonable accommodation is made for those with special needs.

In some circumstances, reasonable accommodation may include:

— altering the work schedule, **with reasonable notice,** to allow an employee to observe a religious holiday
— installing an emergency warning light in washrooms instead of a bell, to assist people who are deaf or hard of hearing
— providing personal assistance to people who cannot read menus
— providing a phone with an amplifier for hotel guests who are hard of hearing

Some people require the presence of an attendant to enable them to participate in everyday life. The Commission would normally consider it a reasonable accommodation to allow the attendant to be exempt from certain of the rules generally applied to other customers. For example, waiving minimum charges in restaurants or "extra person" charges for hotel rooms for attendants. If the attendant is to be charged, the onus will be on the management to justify the necessity of making the charge.

In summary, reasonable accommodation includes an action or actions enabling a person with a special need based on a characteristic referred to, or implied, in Section 9(2) to access the employment , service and housing opportunities which are available to the general public.

The Code recognizes that there are limitations to the duty to accommodate. A form of accommodation is not reasonable where it constitutes an "undue hardship" for the service provider. For example an older Hotel may only have stairs, and is therefore inaccessible to a person in a wheelchair. The cost of installing an elevator may be prohibitive, and the owner may therefore not be able to reasonably accommodate customers who use wheelchairs. Similarly, a small restaurant consisting of a lunch counter may have stools permanently attached to the floor and the loss of profitability in removing several stools to allow access by a person in a wheelchair may be considered an undue financial hardship for this business. However, it would not be considered reasonable to require for example, a person who cannot use the customer entrance to access the premises via the service entrance. The standard is a flexible one and each situation must be considered on its individual merits.

Where an owner has voluntarily improved the premises and facilities and is advertising the establishment as accessible, it would be wise to get expert advice to ensure the premises and facilities **are** accessible. Organizations of persons with disabilities are able to provide this advice.

> *The Commission recognizes the rights of persons with disabilities to access, with dignity, all the services available to the able-bodied.*

The principle of reasonable accommodation also extends to how employees are treated. For example, should a pregnant woman become unable to perform certain duties as her pregnancy advances, her employer must **reasonably** accommodate her — for example, relieving her of duties she cannot be reasonably expected to perform (lifting heavy objects can pose a problem for some pregnant women, for instance). The policy of the Commission on reasonable accommodation states that such accommodation "is assumed to mean that which could be provided without creating an undue hardship or unduly affects the efficiency or safety of the business or enterprise".

Systemic Discrimination

One may discriminate without intending to contravene **The Code.** Section 9 (3) of **The Code** states:

> *In this Code, 'discrimination' includes any act or omission that results in discrimination within the meaning of subsection (1), regardless of the form that the act or omission takes and regardless of whether the person responsible for the act or omission intended to discriminate.*

One way that systemic discrimination (which is usually neither overtly nor intentionally discriminatory) can occur is when a seemingly neutral policy or practice has a disproportionately adverse effect on a group of people. Requirements that are unnecessary for the ability to perform the job may systemically discriminate against a particular group. For example, setting minimum height and weight requirements for security personnel, a neutral policy applied equally to all, may discriminate against most women and Asian males. If challenged in a complaint, the employer would need to establish that being a certain height and weight was a valid requirement, without which, it would be impossible to perform the job.

A facility which, because of its physical design, hinders or denies access to persons with certain disabilities, e.g. crutch or wheelchair users, may be systemically discriminating against this class of persons by failing to provide them with an alternative means of access. For example, a facility which has a ramp as an alternative to stairs has improved accessibility for all persons needing similar access.

> *Consider developing policies on such issues. A policy will ensure that management and staff understand your requirements and the law.*

EMPLOYMENT PRACTICES

Hiring

Employers and Managers should consult **Pre-Employment Inquiries Guidelines,** a Commission publication, for information on questions which can and cannot be asked during job interviews and on application forms. This Guideline provides alternate forms of questions that are not discriminatory. The asking of open ended questions such as "are there any factors which inhibit or limit your ability to perform the duties of the position" is not a contravention of **The Code.**

For example, it is prohibited to request that an applicant list all physical or mental disabilities or health problems. It is however, acceptable to ask whether the applicant has any physical or mental disabilities or health problems **that affect the position applied for.** If the applicant discloses some health condition or disability, it is still the duty of the employer to accommodate the applicant where it is

possible and reasonable to do so. See the section on 'Reasonable Accommodation' for a fuller explanation.

The Code prohibits asking questions during the hiring process which in the past have led to discrimination, for example:

"Are you married?"
"Do you have children?"
"Do you have Canadian experience?"
"Are you pregnant?"
"What is the date you graduated from high school?"

After hiring, The Code does permit the asking of further questions. Information about such issues as age, marital status and number of dependents may be required for employment records or benefits. Employers have the right to hire people competent to do the job. **The Code** requires that hiring decisions be based on bona fide job qualifications, and not on discrimination.

Employers in the Hospitality industry sometimes include attractiveness as a hiring factor especially for women. If an employer refuses to hire a woman solely because of appearance, this may be considered discrimination based on sex and the provisions of **The Code** could apply. If the potential employee is perceived by the employer to be overweight, and thus does not present the image the employer desires but is in every other respect qualified to do the job, the Commission may accept a complaint from that person based on a perceived physical disability. Customer preference for a certain "type" of employee is not a justifiable reason to discriminate. **The Code** protects people who are denied employment because the employer is, in effect, discriminating on behalf of another person — ie, the owner of a nightclub believes customers wish to be served only by young women, and therefore refuses to hire some women because of their age (considered too old), as well as all men, even if they are otherwise qualified.

A practice of classifying jobs as either female only or male only occupations, without bona fide reason, can also be discriminatory. A Court found that a restaurateur discriminated against all women when he treated them differently from men. He employed only men for the evening dining service and assigned women to serve in the patio area of the restaurant at lunch time. The owner's defence, "that he wished to provide a European service" was not acceptable. The Court found that the owner classified jobs on the basis of sex. This differential practice excluded women from employment in the dining room and as a consequence may have impacted on their earnings.

Where an employer chooses to assign men to serve in one area and women to another, the employer must assure that the earnings, benefits, and career advancement opportunities are equal for both sexes. The Commission will accept complaints of this nature to examine the facts and determine the merit of each case.

Advertising

When advertising a vacant position, it is usually against the law to specify a group factor.

> *"Waitress wanted", for example, may contravene* ***The Code,*** *as either a man or a woman can do the work. However, specifying "Waitress/Waiter" or "Food and Beverage Server wanted" would not be discriminatory.*

A newspaper may refuse to print a discriminatory advertisement, as the newspaper may then also contravene **The Code.** Further information regarding the advertising of services will be found under "Signs and Symbols".

Dress Standards For Staff

Employers in the Hospitality industry have the right to set a standard of dress, or require that the staff wear a uniform or costume. A contravention of **The Code** may occur when the wearing of a uniform or costume imposes a burden, obligation or disadvantage on an individual or group not imposed on others; or withholds or limits access to opportunities, benefits, and advantages available to others. Conversely, **The Code** was not intended to address issues of personal convenience or individual preference. For a complaint to have merit, it would be necessary to show that the wearing of the uniform or costume created a disadvantage in employment or working condition.

For example, two women alleged that they were discriminated against when they were required to wear uniforms as a condition of employment. The women stated that when they wore the uniforms they were subjected to verbal and physical harassment. A Court found this to be a contravention of the women's rights. The Court said that the women were required to accentuate their female sexuality and to draw attention to it by the wearing of a uniform, that this was required of them because they were women, and that this was discrimination because of their sex.

Dress and grooming standards appear to contravene the law when it can be demonstrated that one gender is being treated substantially differently from the other, to their disadvantage; for example, where there are two sets of employees performing the same functions, with two entirely separate dress codes. The men are permitted to wear appropriate everyday wear, but the women are required to wear coordinated uniforms. A Court decided that the uniforms were demeaning because they gave the appearance that the female wearer had less professional status than the male colleagues.

Dress standards may also contravene **The Code** when the standard affects the availability of job opportunities, based on one of the group characteristics in Section 9(2). For example, an employer can require all male staff to wear short hair and be clean shaven. Because of their religious belief (a group characteristic cited in Section 9(2)) men of the Sikh faith would be denied employment by this employer.

In either example cited, if a complaint were to be filed, the onus would be on the employer to prove that the grooming/dress standard was a bona fide occupational requirement.
An employee may be required to sign a contract committing them to wearing a particular uniform or costume as a condition of employment. If subsequently the employee finds that wearing the uniform leads to harassment, or to other forms of discrimination, having signed such a contract does not preclude them from filing a human rights complaint. The complaint would be accepted in order for the facts of the situation to be examined and the merit of the complaint assessed.

This does not only apply to dress standards. Employees cannot sign away **any** of the protections of **The Code.** No condition in any contract can waive a person's legislated rights.

In summary, the dress standard that an employer sets should be one that advances the business purpose of the owner whilst considering the dignity of the employee and the right of the employee, as far as possible, not to have to make a permanent change to their personal appearance. Because the issues around dress standards and grooming are complex, and because the circumstances of each case vary, the Commission will accept complaints relating to these issues to examine the facts and determine the merit of each case.

Harassment

Harassment in the workplace or service environment is a contravention of **The Code.** Section 19(1) states;

> *No person who is responsible for an activity or undertaking to which this Code applies shall*
> *(a) harass any person who is participating in the activity or undertaking; or*
> *(b) knowingly permit, or fail to take reasonable steps to terminate, harassment of one person who is participating in the activity or undertaking by another person who is participating in the activity or undertaking*

This section of **The Code** places the responsibility on the owner to maintain a business environment that is free of harassment. If harassment should occur, the owner should take all reasonable steps to mitigate the effects of the harassment and ensure that it is not repeated. Harassment includes acts between employees, between an owner/operator and employees, or between employees and customers.

The Code defines harassment in Section 19(2) as

> *(a) a course of abusive and unwelcome conduct or comment undertaken or made on the basis of any characteristic referred to in subsection 9(2); or*
> *(b) a series of objectionable and unwelcome sexual solicitations or advances; or*
> *(c) a sexual solicitation or advance made by a person who is in a position to confer any benefit on, or deny any benefit to, the recipient of the solicitation or advance, if the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or*
> *(d) a reprisal or threat of reprisal for rejecting a sexual solicitation or advance*

Individuals — employees and customers — are denied equality when they are subjected to harassment. Harassment is abusive and unwelcome conduct that is directed at a person because of the group to which he/she belongs, or appears to belong. The most common forms of harassment are based on sex and ancestry (including race).

Sexual harassment does not include **welcomed compliments** about a person's actions, attitudes or attire. But it can be sexual harassment if:

- — unwanted suggestive remarks are made about a person's appearance or personal life
- — sexually oriented jokes, or sexually oriented material is circulated or displayed
- — a person isn't hired, promoted, or will be fired unless they comply with sexual demands

— a person is subjected to unwanted physical contact, including touching, patting or fondling etc.
— a person complains of the harassment to management and management takes no action to stop the harassment

People that are harassed are frequently afraid to object for fear of losing their jobs.

Racial harassment can be very similar to sexual harassment:

— racially oriented jokes are made, or racially oriented material is circulated or displayed
— a person is subjected to racist name calling and racial insults
— a person complains of the harassment to management and management takes no action to stop the harassment

As with sexual harassment, people are frequently afraid to complain for fear of losing their jobs.

Some materials circulated or displayed on the premises can create a "poisoned environment". Posters, signs or pictures etc. that are displayed in the workplace or facility and which are sexually degrading, racially insulting or ridicule a specific group, although not directed at any individual in particular, create an environment that is not conducive to respect for the dignity and equality of all persons. Groups depicted in such a manner may well believe that the treatment and service they may receive would be discriminatory or that their presence would be unwelcome. It could have the effect of denying the person an expectation of equal treatment.

Hospitality industry owner/operators are legally obligated to take reasonable steps to provide an environment free from harassment and are responsible for acts of harassment committed by an employee, agent or customer, in the course of providing service. An act of harassment may not generate liability for the owner, if the owner exercised all due diligence in preventing such acts.

One way to demonstrate diligence is to establish policies and procedures to guide employee behaviour. Another way is to take prompt action to terminate harassment of the staff by customers and to ensure that such acts are not repeated. Failure to prevent harassment can result in:

— loss of productivity
— loss of business
— high staff turnover
— damage to the service's reputation
— a human rights complaint resulting in possible monetary compensation and other remedies

H.I.V./A.I.D.S.

Acquired Immune Deficiency Syndrome — A.I.D.S. — is one of many physically disabling conditions caused by illness. **The Code** protects people with physical disabilities such as the H.I.V. virus or A.I.D.S. and other communicable diseases from unreasonable discrimination in employment or services. Because this virus and the disease syndrome it creates is not transmittable through casual contact, H.I.V./A.I.D.S. should not be an issue when hiring or during the course of employment of persons working in the hospitality industry.

Since current medical evidence indicates there is no linkage between the transmission of this disease and the preparation or handling of food, conceding to the unfounded fears of customers and employees of contracting the disease is not a reasonable cause to terminate employment. It may be a contravention of **The Code** to deny or terminate employment of a person with H.I.V/A.I.D.S. Therefore, before an employee is taken from regular duties because of H.I.V infection, as with any communicable disease, the employer should review the employee's fitness to work and any health risk to others, as well as ensuring all usual entitlement to sick leave has been used. In making these decisions it is important to rely upon **objective medical evidence,** rather than on myth and fear. Consideration should be given to determining whether reasonable accommodation would allow for continued employment.

An employer would be wise to ensure that the use of medical testing is restricted to the identification of only those medical conditions that affect the ability to perform the job.

Any inquiry regarding physical or mental disabilities or health problems, including medical testing for H.I.V./A.I.D.S., is unlawful, **unless** it can be shown to be necessary to determine the ability to perform the duties of the position.

Unreasonable discrimination against people with H.I.V./A.I.D.S, or against any group of people whom an employer assumes likely to have or to contract the disease, contravenes **The Code** and may result in a complaint.

> If an employer feels it is a bona fide job requirement for an employee not to have H.I.V./A.I.D.S., contact the Commission for advice.

Equality In The Workplace

Employees should be treated equally, without regard for the group to which they belong, or to which they are assumed to belong. For example, men and women with the same job duties and experience should receive similar salaries and benefits. Employees should receive equal opportunities in employment, including hiring, training, promotions and working conditions.

For example, pregnant women are entitled to the same treatment given other employees. They should receive the same sick leave, staff benefits and opportunities available to other staff.

The Code does not protect people who are disciplined based on their *individual merit* (for example, people who are fired for incompetence). Nor is an employee who has a personality conflict with an employer protected by **The Code.** Usually any disciplinary action which is based solely on the employee's individual actions and not upon a group factor does not contravene **The Code.**

THE RIGHTS OF OWNER/ OPERATORS

Owners and managers have the right to determine whom they will or will not serve, subject to other relevant legislation, providing the refusal is not based on a group characteristic listed in Section 9 (2). The law's main concern is that the decision to deny service is not made on a discriminatory basis.

Following are some examples of the rights of owners and managers:

You have the right to protect your property from damage by barring unsuitable customers.
You have the right and duty to protect your staff from harassment.
You have the right and duty to refuse to serve liquor to intoxicated persons regardless of the group to which they belong.
You have the right to refuse service to anyone who disrupts the reasonable comfort and security of your customers.

The Code recognizes that there are sometimes valid reasons to discriminate — to refuse one person service whilst making it available to another. For instance it may be reasonable to refuse a hotel room to a person who cannot provide reasonable indication of the ability to pay the bill, or who is acting in a disruptive or threatening manner.

Owners and Operators are advised to develop and maintain policies which inform customers of acceptable behaviours. Commission staff are available for consultation in the development of policies which will help to eliminate discrimination. Should you be called upon to respond to an alleged complaint of discrimination, a Human Rights Officer will explain both your rights and the legal issues involved in the complaint. Readers who wish more information about the Commission's responsibilities and procedures should contact the Commission. Additional information is also available in the Commission's Annual Report and other publications.

PROVIDING SERVICE

If an establishment is open to the general public, or is a club offering membership to the general public, it should be reasonably available to all members of the public. Owner/Operators cannot unreasonably limit service in an establishment open to the public, based on a group factor protected by **The Code.** Situations where service is either refused or is different because the person belongs to, or is associated with, a particular group could lead to a human rights complaint. Decisions on whether or not to serve customers, or on how to serve customers should be based on individual merit and not on stereotypical assumptions.

The Commission recognizes the right of people to choose with whom they will associate. Any club or organization which is expressly for one group, which is social in nature, and restricts membership to that one group does not contravene **The Code** providing that it causes no limitation or disadvantage to a person from another group.

Customer Dress Codes

Many hospitality industry establishments choose to maintain a certain atmosphere as a way of attracting customers. Dress standards for customers may be an important element in that strategy. Dress standards contravene **The Code** only if people are treated differently based on a group factor protected by **The Code.** Dress standards which are applied equally to all customers, and which take into account such issues as equivalent dress among different cultural groups, do not contravene **The Code.**

For example, there may be a contravention of **The Code** if:

— requiring formal clothing for everyone, but recognizing only "mainstream" formal clothing, denying admission to those wearing formal clothes used by other

cultures
— persons wearing turbans and other clothing as part of a religious belief are denied entrance

It is not a contravention of **The Code** if an operator chooses to bar customers with bare feet, or those who wear shorts, bathing suits or similar clothing, as long as this standard is applied equally to all customers.

Minimum Charges/Length Of Stay

The practice of setting a minimum charge, or introducing a minimum charge at certain times of the day, or setting limits on the length of time customers can remain, do not of themselves contravene **The Code.**

Provisions of **The Code** would apply only if these practices were applied unequally — for example, all teenagers are asked to leave as soon as the meal is finished, however other groups, adults or families, can stay as long as they wish. This, on its face, would appear to contravene **The Code.**

In some establishments, minimum charges or time limits may be applied to certain groups to discourage them from using the service. For example, teenagers are allowed into a restaurant for only a limited time because the owner fears some of them will engage in boisterous or rowdy behaviour. The Commission suggests that rather than specifying the group, operators establish rules which forbid unacceptable behaviour by any persons, regardless of the group to which they may belong .

In summary, to apply minimum charges or length of stay in a manner that does not contravene **The Code,** they should be applied equally to all customers, without any one group being singled out unreasonably for differential treatment.

Promotional Activities

By their very nature promotional activities treat people differentially — "target marketing" often singles out certain groups of people and offers them special incentives to use the service. These incentives do not deny usual services to any group.

Offering set meals at an advantageous price does not of itself contravene **The Code,** nor do customers normally have a special 'human right' to demand substitutes.

A menu offering smaller portions for children, or reduced prices to seniors and students would appear, on its face, to be discriminatory, as would other similar special events. These promotional events exclude people from other groups. The Commission may accept complaints based on circumstances similar to those just cited to examine the individual fact situation.

For instance, it is not likely that a complaint would be found to have merit where an adult alleged they had suffered discrimination because they were denied a free meal, where the promotion was "children eat free".

It is the objective of **The Code,** reinforced by clear messages from the Supreme Court of Canada in recent rulings, that the prohibitions against discrimination are intended to address not just a differential in treatment, but a differential in treatment which results in a significant disadvantage to a group or class of persons.

For a complaint to succeed it is not only necessary to establish that differential treatment has occurred (for example refusing to let an adult select from the children's menu) — it is also necessary for the complainant to establish that the act results for them and the group to which they belong, in a burden, obligation, or disadvantage or withholds or limits access to opportunities, benefits, or advantages available to others .

The Commission will consider each case on its merits with due consideration to the basic intent of the legislation and the objectives of the Commission to prevent unreasonable discrimination.

Denial Of Service

This section addresses the **intentional** denial of entry and/or service to customers.

Human rights law balances one person's rights against another's. Hospitality industry owners and their employees ***do*** have the right to refuse service to individual people under certain circumstances. However, the decision to deny service must be based strictly on the individual merit of the person involved, and not because the person belonged or was associated with any group specified or implied in section 9(2), or on a generalization about the group to which they belong.

Examples of situations where prohibiting a person from the premises would not contravene **The Code,** providing the treatment would be the same for persons belonging to all groups, include:

— a customer in a nightclub, drinks too much, damages furniture or gets involved in a fight
— a customer harasses staff, making repeated

sexual or racist remarks
— a customer who has refused payment on previous visits

The decision to deny access or service should be made based on the behaviour of the individual involved. For example, to refuse service to a person solely because a member of their family has been barred from the premises, or because they are of the same ethnic or racial group as a barred person, may be unreasonable discrimination. If service is denied solely because a person belongs to a group assumed to cause trouble, or to a group the owner believes will be unacceptable to other customers, or for any other stereotypical assumption about a group specified or implied in section 9 (2), there may be a contravention of **The Code.**

Animal Assistants

Animals are generally not permitted, for health reasons, into premises that handle or serve food. However some blind or deaf persons rely upon an animal attendant to assist them. **The Code** protects the rights of these persons not to be discriminated against by being denied entrance or service because they are accompanied by their dogs. In addition, although both the Province of Manitoba and the City of Winnipeg have legislation prohibiting animals in restaurants, both pieces of legislation make **exceptions for guide dogs accompanying a blind or deaf person.** Although the harness worn by seeing eye dogs is well known, the hearing ear dogs accompanying deaf persons are not so familiar. They are readily identifiable, however, by their orange leash.

Signs And Symbols

Section 18 Discriminatory signs and statements

No person shall publish, broadcast, circulate or publicly display, or cause to be published, broadcast, circulated or publicly displayed, any sign, symbol, notice or statement that

(a) discriminates or indicates intention to discriminate in respect of an activity or undertaking to which this code applies; or

(b) incites, advocates or counsels discrimination in respect of an activity or undertaking to which this code applies;

unless bona fide and reasonable cause exists for the discrimination.

When an advertisement is placed in a newspaper, or displayed in the establishment, a discriminatory message cannot be used unless there is reasonable cause. To advertise a restaurant, hotel or bar, but to state it is only available to one particular group, or that certain groups of people are excluded, may violate **The Code.** The service provider is ultimately responsible even if it is an employee that placed the advertisement or sign. It is the owner's responsibility to take all reasonable steps to ensure that employees comply with **The Code.**

The following statements may be contrary to the **The Code** because they all appear to discriminate based on a group factor.

- no gays
- no Natives
- no families
- no single women
- whites only
- seniors only

Before a property owner or manager places an advertisement or sign they should consider whether the preference or limitation expressed is a fair indicator of a person's ability to pay, or a person's behaviour. A previous bad experience with a person from a particular group is no reason to assume that all others from that group will create a similar bad experience.

Newspapers or magazines may refuse to print an advertisement if it appears to violate the law. If a newspaper or other advertising medium publishes a discriminatory advertisement on your behalf, it also contravenes **The Code.**

RIGHTS OF CUSTOMERS

Information on the rights of customers may be inferred from information in these Guidelines which refers to the responsibilities of the owner/operators of hospitality facilities. Following is information specifically oriented towards the rights of customers:

Customers have the right to receive service in hotels, restaurants, and bars without **unreasonable discrimination.** Owner/operators can inquire about a customer belonging to a protected group (unlike employment, where such questions are prohibited), but it is normally contrary to **The Code** for the information obtained to be used in a discriminatory manner. For example:

A hotel desk clerk asks a prospective long term customer about the source of her income. This is a legal question. If the person replies that her source of income is Social Allowance benefits (Welfare), and the desk clerk denies her a room based solely on that information, that denial is contrary to ***The Code.***

As well as rights, a customer also has responsibilities. The customer has the duty not to harass servers or other customers. Although this duty is not directly enforceable against the customer by the Commission, it is indirectly enforceable through the service provider, who is obligated to take all reasonable steps to eliminate such behaviours.

ADVISORY OPINIONS

To assist the person who feels obliged to consider certain group characteristics when making business decisions, but who wishes to ensure that the distinction is not unreasonably discriminatory, **The Code** has provided for binding advisory opinions which can be issued by the Commission. This provision assists hospitality industry owner/operators by ensuring, in advance, that their business practices comply with **The Code.** In many circumstances, though, an informal opinion may be all that is required to assist in decision making. Please contact the Commission if you require further information.

CONCLUSION

We have produced these Guidelines within the spirit of **The Code,** which requires the Commission to "**develop, promote and conduct educational programs designed to eliminate all forms of discrimination prohibited by this Code; and (to) promote understanding of, and compliance with, this Code and the regulations.**"

A society which treats each individual equitably is a fairer, richer, more productive society for all who live in it. And such a society is the ultimate goal of human rights law and of **The Manitoba Human Rights Commission.**

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February 1992